

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 04-53870-JRG
SUKETU DESAI, Chapter 13
Debtors.

_____ /

**ORDER ON FEE APPLICATION OF
MORAN LAW GROUP, INC.**

The court has reviewed the fee application of the Moran Law Group filed on December 7, 2004. The application seeks attorney's fees in the amount of \$5,294.50. For the reasons hereafter stated, the application will be granted in part and denied in part.

The debtor's petition was filed on August 4, 2004. The estimated fees for this case at the time of filing were \$4,350. The fees were estimated pursuant to the court's fee schedule.

The San Jose Division of the Northern District has over 7,000 pending Chapter 13 cases. The majority of these cases are similar in the sense that they involve similar legal services such as filing the petition, statement of affairs and schedules and, possibly, a motion to sell or refinance a residence, a motion for

1 relief from the automatic stay, etc. As a result, the court has
2 established Guidelines For Payment Of Attorney's Fees In Chapter
3 13 Cases. The Guidelines include a fee schedule. The schedule
4 does not limit fees but rather provides that if an attorney charges
5 in accordance with the schedule, and no objections are raised, the
6 scheduled fees will be approved at the time of confirmation of the
7 plan without the filing of a fee application. Numerous courts
8 across the country have fee schedules for Chapter 13 cases.

9 Periodically, the consumer bar surveys fees nationally and
10 presents a request for a review and adjustment of the guideline
11 fees.¹ A copy of the court's current fee schedule is attached. It
12 was adopted on August 1, 2003, based on a recommendation from the
13 consumer bar. The present format contains three types of standard
14 fees. The first involves fees for the services rendered in the
15 basic case which can range from \$1,800 to \$6,350, depending on the
16 circumstances. This type of fee should handle the vast majority
17 of cases from start to finish unless extraordinary circumstances
18 exist.

19 The second type of fee is a standard fee for handling the sale
20 or refinance of real property or a motion to avoid a judicial lien.
21 The fee is \$300 if there is no court hearing required and \$450 if
22 one is needed. The bar represents that this is a reasonable fee
23 for this service.

24 The final type of fee is based on the fact that in some cases
25 circumstances change during the course of the case. Plans
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27 ¹ The National Association of Consumer Bankruptcy Attorneys periodically prepares a
28 survey entitled Chapter 13 Attorneys Fees & Function Survey. This Survey provides information
about fee schedules and fee practices for approximately 100 courts across the country.

1 sometimes need to be modified and a standard fee of \$200-\$400 is
2 set, provided the modification is more than one year after the
3 filing of the petition. A fee of \$200-\$350 is set for new motions
4 for relief from the automatic stay and a fee of \$450 for motions
5 to dismiss or convert. Again, these fees were proposed by the bar
6 as representing reasonable fees for these services absent
7 extraordinary circumstances.

8 The guideline fees are normally approved in the order
9 confirming the debtor's plan. The debtor's plan was confirmed on
10 November 5, 2004, and \$4,350 was approved at that time.

11 The applicant always bears the burden of demonstrating the
12 reasonableness of the request. In re Hecks' Properties, Inc., 151
13 B.R. 739, 745 (S.D.W. Va. 1992). The burden of demonstrating
14 entitlement to the fees requested is on the applicant. In re
15 Stoecker, 114 BR. 965 (Bankr. N.D. Ill. 1990).

16 In reviewing the application and supporting time records
17 certain problems were evident. The request for compensation must
18 be reasonable. In re Riverside-Linden Inv. Co., 925 F.2d 320, 322-
19 23 (9th Cir. 1991); Unsecured Creditors' Committee v. Puget Sound
20 Plywood, Inc., 924 F.2d 955 (9th Cir. 1991). See also In re Kitchen
21 Factors, Inc., 143 B.R. 560, 562-63 (B.A.P. 9th Cir. 1992). The
22 amount billed for preparing the debtor's petition and getting his
23 plan confirmed is excessive. In submitting its proposal for
24 guideline fees the bar suggested that \$1,800 was an appropriate fee
25 in most cases for handling the basic Chapter 13 case which include
26 filing the petition, confirming the plan and more. In this case
27 two attorneys and two paralegals billed \$2,895.50 to get the case
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1 filed and confirmed.

2 There is nothing in the schedules to suggest this is a
3 particularly difficult Chapter 13 case. The debtor owns a home
4 with his wife valued at \$700,000 with a mortgage of \$314,254. They
5 own a 2004 Nissan on which they owe \$16,792 and a 2000 Nissan on
6 which they owe \$18,524. The debtor has 15 unsecured creditors.
7 Moran states that the case was difficult because of the many
8 communications required with the debtor. However, the \$2,895.50
9 billed does not include any time spent communicating with the
10 debtor.

11 The court notes that there were two objections to the plan by
12 the Chapter 13 Trustee. However, these simply asked for the
13 debtor's tax returns and requested a couple of technical
14 corrections. A third objection was filed by the lender on one of
15 the debtor's vehicles. The debtor's plan proposed to value the
16 vehicle at \$10,850, which was significantly below the Kelly Blue
17 Book retail value of \$17,500 and the wholesale value of \$13,125 for
18 a vehicle of like make, model, and condition. The lender indicated
19 the value should be \$15,313, which amount the debtor readily
20 accepted. Such a low-ball valuation of the vehicle can not form
21 a basis for additional fees. Since the Supreme Court's decision
22 in In re Rash, 117 S.Ct. 1879 (1997), the resolution rate of
23 automobile valuation questions by attorneys has been one hundred
24 percent.

25 The time spent on getting the case filed and the plan
26 confirmed is excessive. Rather than a competent attorney or
27 paralegal sitting down and doing the work, two attorneys and two
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paralegals attacked the project in bits and pieces.

Date	Description and Timekeeper	Hours	Amount
6/29/04	Confer with AG re: schedules and petition and budget information - RCM	.50	\$125.00
	Work with AG on petition - RCM	1.00	250.00
	Revise petition - PRL2	2.00	180.00
6/30/04	Revise petition - PRL2	5.00	450.00
7/1/04	Proof petition; Confer with AG re: charges - RCM	1.25	312.50
	Further proofing of petition and calculate life insurance loans vs cash value - RCM	.50	125.00
	Revise petition - PRL2	1.00	90.00
7/2/04	Work with AG on petition - RCM	.30	75.00
	Further revisions to petition - PRL2	2.00	180.00
	Prepare liquidation analysis and equity review; Calculate several possible plan terms and payouts - AP	.70	63.00
7/6/04	Review schedules with RCM, analyze plan options - CCM	.25	62.50
7/18/04	Review schedules for corrections; Calculate budget information - RCM	.30	75.00
7/19/04	Confer with CCM re: plan and schedules - RCM	.20	50.00
	Analyze & calculate possible plan terms; Draft plan; Draft amendment to matrix; Draft rights & responsibilities - AP	1.00	90.00
	Revise schedule C; Review and work on budget; Analyze business income and expenses - AP	.75	67.50
7/21/04	Proof petition; Draft 2016 statement; Confer with CCM re: pot plan; Confer with AP re: revisions - RCM	.50	125.00

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8/23/04	Receive WFS objection to confirmation, reconstruct valuation issues in plan; do new plan terms analysis to deal with greater values; address business income and expense issues raised by trustee and draft amended I and J Confer with AG re: numbers - CCM	1.00	250.00
10/12/04	Draft Third Amended Plan; review file to determine if OCp and Chapter 13 plan are on file - RCM	.50	125.00
10/28/04	Appear at prehearing (shared travel to and from San Jose) - CCM	.50	125.00
	TOTALS:	19.25	\$2,820.50

The court finds no support for fees in excess of the guideline amount for handling the basic case.

The court grants fees in the amount of \$4,274.00. Fees in the amount of \$1,020.50 are denied.

DATED: _____

JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

*United States Bankruptcy Court
Northern District of California
San Jose Division*

**GUIDELINES FOR PAYMENT OF ATTORNEY'S FEES
IN CHAPTER 13 CASES**

The following are guidelines for the circumstances under which a detailed fee application need not be filed in Chapter 13 cases and the manner in which the Chapter 13 Trustee will disburse fees which are approved.

A. Fee Applications.

1. Counsel may receive an order approving fees and costs up to the amounts set forth in Paragraph 2 without filing a detailed application if:

- (a) Counsel has filed and served the Chapter 13 Trustee with an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," copies of which are available on the Court's website;
- (b) Counsel has accepted no more than \$750 as a retainer in a consumer case or \$1,500 as a retainer in a business case;
- (c) No objection to the requested fees has been raised.

2. The maximum fee that can be approved through the procedure described in Paragraph 1 is:

- \$1800 for the basic case; and an additional
- \$ 750 if the case involves real property claims;
- \$ 500 for each additional parcel of real property with an encumbrance of at least \$10,000;
- \$ 500 if the case involves state or federal tax claims
- \$ 300 if the case involves vehicle loans or leases;
- \$1500 if the case involves an operating business;
- \$ 400 if the case involves support arrears claims;
- \$ 300 if the case involves student loans;
- \$ 300 if the case involves more than 25 creditors, including collection agencies and attorneys.

Additional flat fees for services rendered will be automatically approved, upon application by the attorney without requiring the submission of time records, as follows:

Plan modifications filed after one year from the petition date:

- a. Not requiring amended Schedules I & J \$ 200
- b. Requiring amended Schedules I & J \$ 400

Permission to sell, refinance, or purchase real property, or one or more motions to avoid judicial liens:

- a. Not requiring court hearing \$ 300
- b. Requiring court hearing \$ 450

New motions for relief from the automatic stay, excluding unopposed motions, filed after one year from the petition date:

- a. Regarding personal property \$ 200
- b. Regarding real property \$ 350

Motions to dismiss, convert, or reconvert, excluding Trustee's Notices of Default regarding plan payments: \$ 450

3. If an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" is not filed, counsel has accepted more than the amount authorized in A.1.(b) without court approval, or there is an objection, an order will not be entered automatically pursuant to these Guidelines.

1 4. If counsel elects to be paid other than pursuant to these Guidelines, all fees including the retainer must be
2 approved by the court whether or not the fees are payable through the Chapter 13 Trustee's Office and
whether or not fees are paid for services in connection with the Chapter 13 case.

3 5. If counsel applies for fees, counsel must comply with Rules 2002 and 2016 of the Federal Rules of
4 Bankruptcy Procedure, as well as the "Guidelines for Compensation and Expense Reimbursement of
Professionals" adopted by the Bankruptcy Judges of the Northern District of California.

5 6. Counsel may request reimbursement of out-of-pocket court fees advanced, even if counsel elects to receive
6 the automatic fees available in Paragraph 2.

7 7. On its own motion or the motion of any party in interest, the court may order a hearing to review any fee
whether paid or unpaid.

8 **B. DISTRIBUTION OF FUNDS IN CHAPTER 13 CASES.**

9 Payments shall be disbursed in the following order:

10 1. \$750 towards attorney's fees, less any amount received pre-filing as a retainer;

11 2. To secured creditors and the balance of attorney's fees. Those secured creditors that are specified
12 in the plan to receive fixed monthly payments will be paid the amount specified. If fixed monthly payments are
13 specified in the plan for all secured creditors, the balance of the plan payment will be disbursed toward
attorney's fees. If fixed monthly payments are not specified in the plan for all secured creditors, secured claims
without fixed monthly payments and the balance of attorneys fees will be pro-rated;

14 3. To priority creditors in the order prescribed by the Bankruptcy Code;

15 4. To unsecured creditors.
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1 Case No. 04-53870-JRG

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5 UNITED STATES BANKRUPTCY COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 CERTIFICATE OF SERVICE

8 I, the undersigned, a regularly appointed and qualified
9 Judicial Assistant in the office of the Bankruptcy Judges of the
10 United States Bankruptcy Court for the Northern District of
California, San Jose, California hereby certify:

11 That I, in the performance of my duties as such Judicial
Assistant, served a copy of the Court's: ORDER ON FEE APPLICATION
12 OF MORAN LAW GROUP, INC. by placing it in the United States Mail,
First Class, postage prepaid, at San Jose, California on the date
shown below, in a sealed envelope addressed as listed below.

13 I declare under penalty of perjury under the laws of the
14 United States of America that the foregoing is true and correct.

15 Executed on _____ at San Jose, California.

16
17
18 _____
LISA OLSEN

19
20 Devin Derham-Burk
21 Chapter 13 Trustee
P.O. Box 50013
22 San Jose, CA 95150-0013

23 Cathleen Cooper-Moran
MORAN LAW GROUP, INC.
24 800 California St., Suite 230
Mountain View, CA 94041
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